

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4273 of 1993

PRITHVI SINGH
V/S
STATE OF RAJ.

Mr. J.K. CHANDA, for the appellant / petitioner

Mr. SANGEET LODHA, for the respondent

Date of Order : 2.3.2007

HON'BLE SHRI N P GUPTA, J.

ORDER

By this petition, the petitioner seeks to challenge Annexure-1 being order dt. 30.11.1988 according sanction of the prosecution of the petitioner, and has also prayed for quashing the complaint Annexure-2, and the prosecution pending pursuant thereto.

The facts of the case are that there was a partnership firm in which the petitioner was one of the partners, and according to the Department some demand of tax was created against the firm, and since that was not paid despite notice, sanction was accorded against the petitioner vide Annexure-1 for prosecuting the petitioner under Section 16(3)(h) of the Rajasthan Sales Tax Act, 1954 pursuant thereto a complaint was lodged being Annexure-2. This is challenged interalia on the ground that the

petitioner was a partner in the firm only upto 31.12.1974, and not thereafter apart from the fact that sanction has been accorded against firm M/s. Deora Brothers while the petitioner had nothing to do with that firm, and the firm in which the petitioner was partner, therefrom also he has retired on 31.12.1974. Then, it is also contended that before according sanction no opportunity of hearing was given to the petitioner.

In reply apart from other pleadings, in sub-para (d) of para-2 the respondents have not disputed the fact that no opportunity of hearing was given to the petitioner before according sanction, and has taken the stand that on the language of Sec. 16(8) no opportunity of hearing is envisaged before according the sanction.

Learned counsel for the petitioner relied upon judgment of this Court in S.B.Civil Writ Petition No. 4061/1991 decided on 11.5.1992 Vijender Kumar Vs. State which in turn follows the judgment of Hon'ble the Supreme Court in Navnithbhai R.Kapasiawala & Ors. Vs. Bhagwandas Vaniram Trivedi & Ors. Reported in 1982 S.C. U.J.-829, and judgment of this Court in Shree Singhvi Brothers Vs. Union of India reported in 1991 I.T.R.-219, and contended that in this case the view has been taken that even before according sanction, on the principles of natural justice, an opportunity of hearing is required to be given to the

person sought to be prosecuted, and precisely on that ground the sanction has been quashed.

Learned counsel for the respondent except relying on the language of Section 16(8) could not dispute the proposition laid down in these cases.

Consequently, the writ petition is allowed on the short point. The sanction having been accorded for prosecution of the petitioner without giving an opportunity of hearing to the petitioner vide Annexure-1 is quashed and consequent proceedings are quashed. However, it is clarified that it will be open to the Department to consider the matter afresh by giving opportunity of hearing to the petitioner, and after considering the submissions made by the petitioner, the Department shall be free to proceed afresh according to law. The parties shall bear their own costs.

(N P GUPTA), J.

/Sushil/